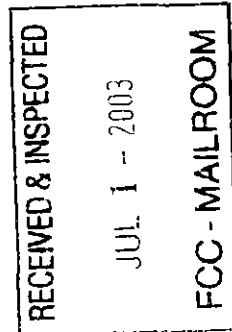




Federal Communications Commission  
Washington, D.C. 20554

June 27, 2003

Cary S. Tepper  
Booth, Freret, Imlay & Tepper, P.C.  
7900 Wisconsin Avenue – Suite 304  
Bethesda, MD 20814-3628



Re. Petition for Rule Making  
Ohatchee, AL – Channel 292A

Dear Mr. Tepper

This is in response to the Petition for Rule Making that you filed on behalf of Jacobs Broadcast Group, Inc., requesting the allotment of Channel 292A at Ohatchee, Alabama, as that community's first aural broadcast service.

Your client's request for the allotment of Channel 292A at Ohatchee, Alabama, is unacceptable. Our engineering analysis indicates that the site that you specify in your proposal (33-53-29 NL and 85-57-28 WL) is short-spaced to a site previously requested in another rulemaking. See *Auburn, Northport, Tuscaloosa, Camp Hill, Gardendale, Homewood, Birmingham, Dadeville, Orrville, Goodwater, Pine Level, Jemison, and Thomaston, Alabama*, MM Docket No. 01-104.

In MM Docket No. 01-104, a counterproposal requested the reallocation of Channel 295C from Birmingham to Homewood, Alabama, at reference coordinates 33-29-19 NL and 86-47-58 WL. Although that counterproposal was dismissed in the initial *Report and Order* in MM 01-104, 17 FCC Rcd 16,227 (MB 2002), a petition for reconsideration was filed on October 9, 2002. In a recent *Memorandum Opinion and Order*, DA 03-1124 (released May 20, 2003), we granted the requested reconsideration and allotted Channel 295C at Homewood, Alabama.

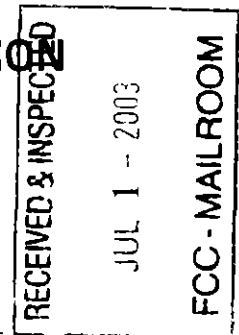
Your client's proposal for Ohatchee, Alabama, is short-spaced to Channel 295C at Homewood, Alabama. For that reason, we are returning your client's petition for rulemaking to allot Channel 292A at Ohatchee, Alabama. You may resubmit the petition, provided that you make a showing that a fully-spaced transmitter site is available that provides city grade coverage to the entire community.

Sincerely,

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Enclosure

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554



In the Matter of: )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations, )  
(Ohatchee, Alabama) )

RM - \_\_\_\_\_

**RECEIVED**

To: Assistant Chief, Audio Division  
Media Bureau

SEP 16 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

## PETITION FOR RULE MAKING

Jacobs Broadcast Group, Inc. ("Jacobs"), by Counsel, and pursuant to §1.401 of the Commission's Rules, hereby respectfully petitions the Commission to institute Rule Making proceedings for amendment of the FM Table of Allocations to add Channel 292A (106.3 MHz) to Ohatchee, Alabama, as its first aural FM facility, as follows:

<u>City / State</u>	<u>Existing</u>	<u>Proposed</u>
Ohatchee, Alabama	---	292A

In support hereof, the following is shown:

### Background

1. Ohatchee is located in Calhoun County, Alabama. There are no radio stations presently licensed to Ohatchee.
2. Jacobs believes that none of the area radio stations provide programming that is responsive to the unique interests and needs of Ohatchee.

As indicated below, if these efforts are successful, Jacobs will pursue an application to provide such FM radio service to Ohatchee through the Commission's auction selection process or any other process that might be applicable in the future.

#### **Technical Criteria**

3. Attached hereto as Exhibit No. 1 is an Engineering Statement prepared by Graham Brock, Inc. wherein it is demonstrated that Channel 292A may be allotted to the community of Ohatchee, Alabama in compliance with Section 73.207 of the Commission's Rules regarding current spacing requirements.<sup>1</sup> According to the Engineering Statement, Channel 292A may be allotted to Ohatchee at site reference coordinates North Latitude 33 - 53 - 29 and West Longitude 85 - 57 - 28. From this location, the 3.16 mV/m city-grade contour will encompass the entire community of Ohatchee.

#### **Allotment Eligibility**

4. According to the Ohatchee Mayor's Office/<sup>2</sup>, Ohatchee, has its own elected government comprised of a mayor and five commissioners. Elections are held every four years. The Mayor's Office also advised Jacobs

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<sup>1</sup> As the attached Engineering Statement explains, This proposal fully protects Radio Station WBPT-FM (Birmingham, Alabama) since that radio station recently was granted a Construction Permit for Class CO status. See, *Construction Permit BPH-20020305AAD (issued August 22, 2002)*. Also, this proposal fully protects Radio Station WSKZ-FM (Chattanooga, Tennessee) as a Class CO facility pursuant to Note 4 of Section 73.3573 of the Commission's Rules.

<sup>2</sup> The telephone number of the Ohatchee Mayor's Office is (256) 892-3233.

that the town of Ohatchee provides water service and garbage pick-up service to its residents.

5. Ohatchee has its own police and fire departments. The Ohatchee Police Department is located at 301 Main Street, and its telephone number is (256) 892-3156. The Ohatchee Volunteer Fire Department is located at 2396 Harts Ferry Road, and its telephone number is (256) 892-3911. There is also the Ohatchee Volunteer Rescue Team located at 296 Main Street, and its telephone number is (256) 892-1210.

6. Ohatchee has its own U.S. Post Office located at 1410 Alabama Highway 62/<sup>3</sup>, and Zip Code "36271" is associated solely with the town of Ohatchee.

7. Ohatchee is also home to numerous businesses and houses of worship, many of which use the town's name, such as:

Ohatchee Discount Drugs (Tele. 256-892-0653)  
Ohatchee Video (Tele. 256-892-0014)

Ohatchee Farms (Tele. 256-892-1642)  
Ohatchee General Store (Tele. 256-892-2311)

Family and Occupational Medicine  
Ohatchee Clinic (Tele. 256-892-2866)  
Camp Ohatchee Day Care (Tele. 256-892-2668)

First Class Pizza & Subs (Tele. 256-892-2600)  
Mama Gregory's Restaurant (Tele. 256-892-1095)  
Jack's Family Restaurant (Tele. 256-892-2044)

---

<sup>3</sup> The telephone number there is (256) 892-0861.

Ohatchee Church of Christ (Tele. 256-892-0011)  
Ohatchee United Methodist (Tele. 256-892-2002)  
First Baptist Church - Ohatchee (Tele. 256-892-3142)

Victory Baptist Church (Tele. 256-892-9116)  
Mamre Baptist Church (Tele. 256-892-3067)  
Calvary Chapel Church (Tele. 256-892-2228)

Christian Assembly (Tele. 256-892-2437)  
Greater Ebenezer Baptist (Tele. 256-892-3021)  
Oak Bowery Baptist Church (Tele. 256-892-3711)

*Source: www.superpages.com*

8. It should also be noted that the U.S. Census Bureau has a separate town listing for Ohatchee, indicating a Year 2000 population of 1,215.

9. Jacobs submits that when all of the above factors are considered - especially Ohatchee's elected government and government services, and the use of the Ohatchee name in many businesses and places of worship -- the Commission should conclude that Ohatchee has a geographically identifiable population grouping that is worthy of the allotment of a broadcast channel to the community. *See, e.g., Hannibal, Ohio, 6 FCC Rcd. 2144, 69 RR 2d 113 (MMB 1991); FM Channel Assignments: Middletown, California, 69 RR 2d 1626 (MMB 1991); Oak Grove, FL, 5 FCC Rcd 3774 (1990).*

#### **Public Interest Showing**

10. Objective indicia of community status is present to support the allotment of Channel 292A to Ohatchee, Alabama.

**Statement of Interest**

11. Jacobs hereby expresses its intention to apply for Channel 292A at Ohatchee, Alabama, if that Channel is allotted by the Commission, and that further, if its Application is granted, to construct and operate that facility.

WHEREFORE, the above premises considered, Jacobs respectfully urges the Commission to GRANT the instant Petition, and to AMEND the Table of FM Allotments to specify Channel 292A at Ohatchee, Alabama.

Respectfully submitted,

**JACOBS BROADCAST GROUP, INC.**

By:   
Cary S. Tepper

Its Attorney

**Booth, Freret, Imlay & Tepper, P.C.**  
7900 Wisconsin Avenue  
Suite 304  
Bethesda, MD 20814-3628

(202) 686-9600

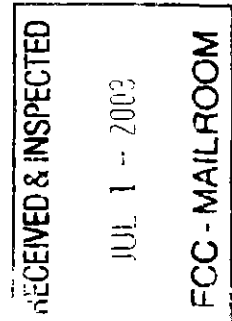
September 16, 2002

**Exhibit No. 1**

**(Supporting Technical Statement)**

# GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS



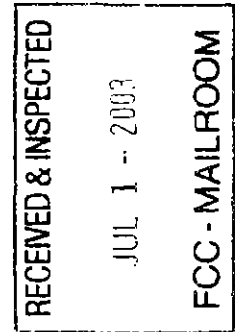
**PETITION FOR RULE MAKING**  
**JACOBS BROADCAST GROUP, INC.**  
**NEW FM RADIO STATION**  
**ALLOT CHANNEL 292A**  
**OHATCHEE, ALABAMA**  
**September 2002**

**TECHNICAL EXHIBIT**

*Copyright 2002*



**PETITION FOR RULE MAKING**  
**JACOBS BROADCAST GROUP, INC.**  
**NEW FM RADIO STATION**  
**ALLOT CHANNEL 292A**  
**OHATCHEE, ALABAMA**  
**September 2002**



**TECHNICAL STATEMENT**

1. This technical statement and attached exhibits have been prepared on behalf of Jacobs Broadcast Group, Inc. ("Jacobs"), requesting that Channel 292A be allotted to Ohatchee, Alabama. The proposed allotment to Ohatchee, Alabama, will provide the community with its first locally licensable aural service.

**DISCUSSION**

2. The community of Ohatchee is located in northeast Calhoun County, Alabama. Ohatchee is a town ("CDP") listed in the 2000 U.S. Census with a population of 1,215 persons.

**PROPOSAL**

3. Channel 292A can be allotted to Ohatchee, Alabama, at geographic coordinates North Latitude 33° 53' 29" and West Longitude 85° 57' 28". From the proposed reference site, a city grade signal will be delivered to all of Ohatchee pursuant to the Commission's rules. Exhibit #2 is a §73.207 spacing study from the proposed site, demonstrating that Channel 292A meets the Commission's minimum distance separation requirements to all licensed, applied for or proposed facilities, with the exception of the licensed facility of WSKZ, Channel 293C, Chattanooga, Tennessee, and the licensed facility of WBPT, Channel 295C, Birmingham, Alabama.

### **WBPT SHORTSPACE**

4. WBPT has applied for and received a construction permit to operate as a Class C0 facility. The Class C0 designation was specifically requested by CXR Holdings, Inc., in application BPH-20020305AAD, as amended July 22, 2002. This proposal, therefore, protects WBPT as a Class C0 facility and is full spaced under §73.207.

### **WSKZ SHORTSPACE**

5. The potential for this new allotment is based on protecting WSKZ, Channel 293C, Chattanooga, Tennessee, as a Class C0 facility. In the Second Report and Order in MM Docket #98-93, a new Class of FM stations was created, Class C0. Pursuant to Note #4, §73.3573, *"A Class C station operating with a height above average terrain ("HAAT") of less than 451 meters is subject to re-classification as a Class C0 station upon the filing of a triggering application for a construction permit that is short-spaced to such Class C station under Section 73.207 but would be fully spaced to such a station as a Class C0 assignment...The reclassification procedure also may be initiated through the filing of an original petition for rule making to amend the FM Table of Allotments as set forth in NOTE 2 to §1.420(g)."*. This proposal for a new FM station in Ohatchee is based on WSKZ being considered a Class C0, rather than a Class C station. As a Class C0, WSKZ is fully spaced to this proposal. No other Class A channels are available for use as a new allocation to Ohatchee, Alabama, from the above noted coordinates, or from other coordinates nearby. Therefore, this allocation proposal complies with Note #4 of §73.3573 of the Commission's Rules.

6. Therefore, Jacobs Broadcast Group, Inc., herein requests the following changes in §73.202 of the Commission's rules.

**Ohatchee, Alabama**

Present	Proposed
None	292A

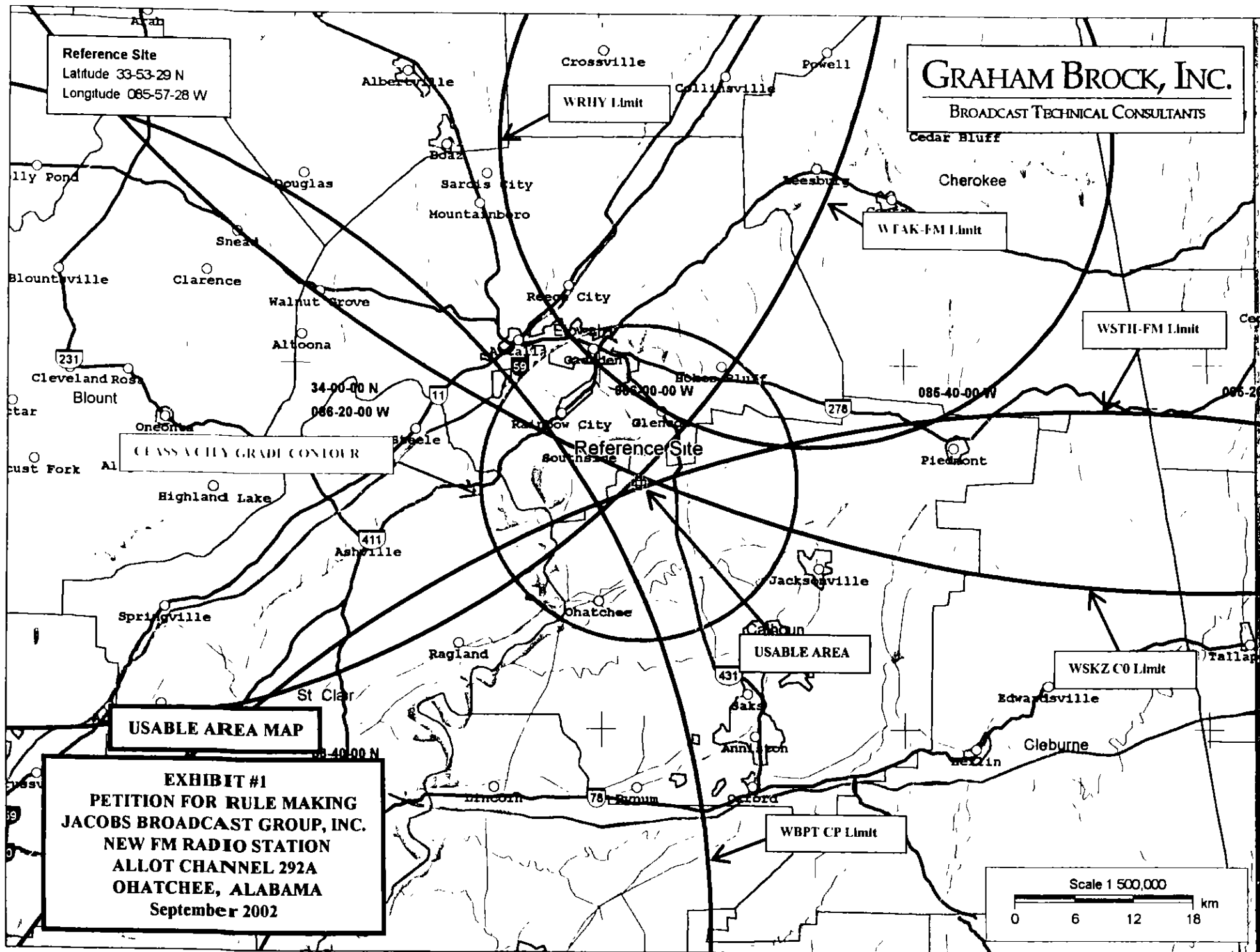
**PUBLIC INTEREST**

7 The allotment of Channel 292A to Ohatchee will provide that community with its first locally licensable station. From the proposed reference site, the Channel 292A allotment will provide service to 163,183 persons in 2,516.1 square kilometers.<sup>1</sup> Once Channel 292A is allotted to Ohatchee, Alabama, Jacobs Broadcast Group, Inc., will submit its continuing expression of interest or other necessary filing requesting a permit to construct a new FM station on Channel 292A at Ohatchee, Alabama.

8. The foregoing technical statement was prepared on behalf of Jacobs Broadcast Group, Inc., by Graham Brock, Inc., its Technical Consultants. All data related to FM facilities was extracted from the CDBS database. We assume no liability for errors or omissions in that database that may be adverse to the requests contained herein.

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1) This is based on a service radius of 28.3 kilometers from the reference site (no terrain variations)



Reference Site  
Latitude 33-53-29 N  
Longitude 085-57-28 W

**GRAHAM BROCK, INC.**  
BROADCAST TECHNICAL CONSULTANTS

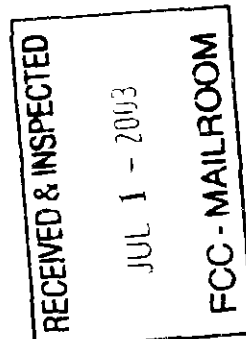
CLASS CITY GRADE CONTOUR

USABLE AREA MAP

**EXHIBIT #1**  
**PETITION FOR RULE MAKING**  
**JACOBS BROADCAST GROUP, INC.**  
**NEW FM RADIO STATION**  
**ALLOT CHANNEL 292A**  
**OHATCHEE, ALABAMA**  
**September 2002**

Scale 1:500,000  
0 6 12 18 km

**PETITION FOR RULE MAKING**  
**JACOBS BROADCAST GROUP, INC.**  
**NEW FM RADIO STATION**  
**ALLOT CHANNEL 292A**  
**OHATCHEE, ALABAMA**  
**September 2002**



**EXHIBIT #2**

REFERENCE

33 53 29 N  
 85 57 28 W

CLASS = A

Current Spacings

DISPLAY DATES

DATA 05-17-02

SEARCH 05-28-02

Channel 292 - 106.3 MHz

Call	Channel	Location	Dist	Azi	FCC	Margin
N Lat	W Lng.	Ant	Power	HAAT		
ADD	ADD 292A	Ohatchee	AL	0.00	0.0	-115.00
33 53 29	85 57 28		0.000 kW	0 M		
**WSKZ	LIC 293C0	Chattanooga	TN	152.65	22.3	-12.35
35 09 42	85 19 06	CN	100.000 kW	329 M		
	Citadel Broadcasting Co.		BLH-7303			
*WBPT	LIC 295C	Birmingham	AL	89.92	240.3	-5.08
33 29 19	86 47 58	CY	100.000 kW	351 M		
	Cxr Holdings, Inc.		BLH-19880219KD			
WTAKFM	LIC 291C3	Hartselle	AL	89.48	315.4	0.48
34 27 45	86 38 36	NCN	5.400 kW	221 M		
	Capstar Tx LP		BLH-19931026KB			
WSTHFM	LIC 291C1	Alexander City	AL	133.56	160.2	0.56
32 45 30	85 28 20	CN	86.000 kW	319 M		
	Solar Broadcasting Company		BLH-19950410KB			
**WSKZ	LIC 293C0	Chattanooga	TN	152.65	22.3	0.65
35 09 42	85 19 06	CN	100.000 kW	329 M		
	Citadel Broadcasting Co.		BLH-7303			
*WBPT.C CP	295C0	Birmingham	AL	90.75	240.3	4.75
33 29 04	86 48 25	CY	100.000 kW	404 M		
	Cxr Holdings, Inc.		BPH-20020305AAD			
WRHY	LIC 290A	Centre	AL	38.67	26.2	7 67
34 12 14	85 46 20	CN	6.000 kW	100 M		
	Williams Communications, Inc		BLH-19930414KB			
RADD	ADD 292A	Maplesville	AL	159.59	213.2	44.59
32 41 06	86 53 30		6.000 kW	100 M		
WENN	LIC 290A	Trussville	AL	78.21	242.1	47.21
33 33 38	86 42 11	NCN	1.400 kW	205 M		
	Capstar Tx LP		BLH-19930903KB			

- \* - Considered as a Class C0 facility as requested by CXR Holdings, Inc.  
 \*\* - Considered as a Class C0 facility pursuant to §73.3537

**AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT**

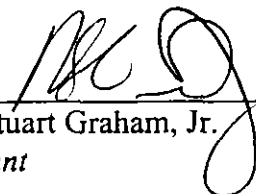
*State of Georgia    )*  
*St Simons Island    ) ss.*  
*County of Glynn    )*

**R. STUART GRAHAM**, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Jacobs Broadcast Group, Inc., to prepare the attached Technical Exhibit.


His qualifications are a matter of record before the Federal Communications Commission. He is a graduate of Auburn University and has been active in Broadcast Engineering since 1972.

The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

*This the 13th day of September, 2002.*

  
\_\_\_\_\_  
R. Stuart Graham, Jr.  
Affiant

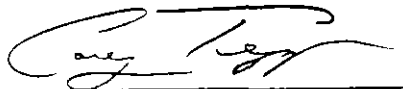
*Sworn to and subscribed before me  
this the 13th day of September, 2002*

  
\_\_\_\_\_  
Notary Public, State of Georgia  
My Commission Expires April 16, 2006

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 16th day of September, 2002, I have served a copy of the foregoing "**Petition for Rule Making**" first-class, postage-prepaid, on the following:

\*John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.; Room 3-A266  
Washington, D.C. 20554

A handwritten signature in black ink, appearing to read 'Cary Tepper', written over a horizontal line.

Cary S. Tepper, Esq.

\*/ indicates delivery by hand